

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DANIEL R. STANTON,)	
)	
<i>Petitioner</i>)	
)	
v.)	<i>Civil Docket No. 96-320-P-C</i>
)	
SUPERINTENDENT, MAINE)	
CORRECTIONAL CENTER,)	
)	
<i>Respondent</i>)	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

Appearing *pro se*, petitioner Daniel R. Stanton seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in connection with his conviction in the Maine Superior Court (Cumberland County) (Criminal Docket No. CR-95-525) on charges of attempted theft by deception and false public report. The petition raises claims of ineffective assistance of counsel, various due process violations, flaws in the indictment and in the conduct of the trial, violation of the petitioner's right against self-incrimination, and insufficiency of the evidence. Because the petitioner has fully served the terms of imprisonment imposed as a sentence for these convictions, I recommend that the court deny the petition.

I. Background

The petitioner was indicted on charges of attempted theft by deception (Class C) and false public report (Class D) on March 10, 1995. Indictment, *State v. Stanton*, Superior Court

(Cumberland County), Docket No. CR-95-595.¹ Following a jury trial on May 16, 1995, at which he was represented by counsel, the petitioner was convicted on both counts, with the theft count reduced to a Class D crime. Docket, *State v. Stanton*, Superior Court (Cumberland County), Docket No. CR-95-595, at 2. The petitioner was sentenced to a term of six months' imprisonment on each count, the sentences to run concurrently. Judgment and Commitment, *State v. Stanton*, Superior Court (Cumberland County), Docket No. CR-95-595. The court also ordered the petitioner to pay \$10.00 on each count, for a total of \$20.00, to the clerk of the court for the victims' compensation fund. *Id.* The petitioner immediately began to serve the sentences and was unconditionally released and discharged on September 12, 1995. Release Date Computation Sheet, CC Jail, Inmate Daniel Stanton, Docket No. 95-595 at [5]. The petitioner asserts that he has not paid the \$20.00 assessment. Response of Rebuttal from Petitioner Against Respondent (Docket No. 13) at 2.

On July 26, 1995 the petitioner filed an untimely notice of appeal from the judgment; the Law Court dismissed the appeal. Order dated August 3, 1995, *State v. Stanton*, Supreme Judicial Court sitting as the Law Court, Docket No. Cum-95-457. The petitioner's motion for reconsideration of this dismissal was denied. Order dated August 17, 1995, *State v. Stanton*, Supreme Judicial Court sitting as the Law Court, Docket No. Cum-95-457.

On May 21, 1996 the petitioner filed an untimely post-conviction review proceeding in state court in which he asserted some of the grounds raised in his current petition to this court. Petition for Post-Conviction Review, *Stanton v. State*, Superior Court (Cumberland County), Docket No. CR-96-976. This petition was dismissed on jurisdictional grounds, because the petitioner had served the

¹ Unless otherwise indicated, all documents referred to herein are appended to the Response to Petition, etc. (Docket No. 11).

sentence imposed on the judgments that he was challenging. Post-Conviction Order of Dismissal, *Stanton v. State*, Superior Court (Cumberland County), Docket No. CR-96-976. No appeal was taken from this dismissal. Docket, *Stanton v. State*, Superior Court (Cumberland County), Docket No. CR-96-976.

The petitioner next filed, on July 5, 1996, a motion for a new trial on the basis of newly discovered evidence; this motion was denied on July 19, 1996. Motion [undated, stamped "Jul 5 1996" by court], *State v. Stanton*, Superior Court (Cumberland County), Docket No. CR-95-595, with handwritten denial dated 7-19-95; *see also* Docket at 4. The petitioner took no appeal from this denial. Docket at 4.

The petitioner was convicted of gross sexual assault on November 1, 1995, following a jury trial. Docket, *State v. Stanton*, Superior Court (Cumberland County), Docket No. CR-94-1842, at 4. He is currently serving the sentence imposed on that conviction. Judgment and Commitment, *State v. Stanton*, Superior Court (Cumberland County), Docket No. CR-94-1842. He does not contend that this sentence is related in any way to the sentence that was imposed and served in the case that is the subject of this petition.

The petitioner filed the current action in this court on November 4, 1996. Docket No. 1.

II. Analysis

A. Effect of Antiterrorism and Effective Death Penalty Act of 1996

The respondent asserts that this action is untimely under 28 U.S.C. § 2254(d)(1)(A) and (2), enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996. The petition in this case was filed after the Act took effect on April 21, 1996. The section to which the respondent refers establishes a one-year period of limitation on applications for writs of habeas corpus which runs

from the latest of the date on which the underlying judgment became final, the date on which certain impediments to filing an application are removed, the date on which the constitutional right asserted was recognized by the United States Supreme Court, or the date on which the factual predicate of the claim could have been discovered. The Act provides for tolling of the period of limitation while properly filed applications for state post-conviction or collateral review are pending. Allowing the petitioner credit for such tolling, this petition was filed more than one year after his conviction became final.

However, the Constitution requires that statutes of limitation allow a reasonable time after they take effect for the commencement of suits upon existing causes of action. *Texaco, Inc. v. Short*, 454 U.S. 516, 527 n.21 (1982). *See also Block v. North Dakota*, 462 U.S. 273, 286 n.23 (1983) (applying same requirement to state statutes). Finding that it would be inequitable and prejudicial to apply a new statute of limitations to a habeas claim that accrued prior to the announcement of the new rule without providing a grace period in which to file a petition on such a claim, two federal district courts have found that a grace period in the amount of the new limitation period would be reasonable. *Duarte v. Hershberger*, 947 F. Supp. 146, 148-49 (D. N. J. 1996); *Flowers v. Hanks*, 941 F. Supp. 765, 771 (N. D. Ind. 1996). Thus, claims brought under section 2254 would not be barred by the new statute of limitations if filed on or before April 23, 1997. I find the reasoning of these courts to be persuasive. Accordingly, I conclude that the petitioner's claim, filed on November 4, 1996, is not barred by the April 24, 1996 amendment to section 2254.

B. Jurisdiction Due to Custody

The respondent next argues that this court lacks jurisdiction over the petition because the

petitioner is not in custody in connection with the conviction which he seeks to attack. This petition is governed by 28 U.S.C. § 2254(a), which provides:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

It is undisputed that the petitioner was not in custody pursuant to the judgment in Docket No. CR-95-595 when he filed this petition. Ordinarily, this fact would deprive this court of jurisdiction and require that the petition be denied. *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989).

However, the petitioner asserts that his failure to pay the \$20 assessment for the victims compensation fund means that he is still under sufficient restraint to create jurisdiction in this court. The statute requiring imposition of this assessment, 5 M.R.S.A. § 3360-I, states that “these assessments are considered part of the fine.” Under Maine law, default in payment of a fine subjects the convicted person to possible incarceration for up to one day for each \$5 of the fine. 17-A M.R.S.A. § 1304. There is no indication in the materials submitted to the court that the state has initiated or is planning to initiate collection proceedings for the \$20 which the petitioner says that he has not paid.

A sentence imposing only a fine does not result in custody for the purposes of habeas corpus jurisdiction, even though failure to pay the fine could result in incarceration. *Tinder v. Paula*, 725 F.2d 801, 804 (1st Cir. 1984).

The fine itself is not a serious restraint and the possibility that the court will resort to imprisonment to enforce the fine is considered too remote and speculative to warrant the invocation of federal habeas jurisdiction. In addition, persons subject to fines maintain greater “control” over the threat of imprisonment than do probationers or parolees; they generally can avoid

the possibility of incarceration simply by paying the fine.

Id. (citations omitted). The petitioner could not be imprisoned for failure to pay the assessment if he shows that he is unable to pay. 17-A M.R.S.A. § 1304(1). If he is incarcerated as the result of a willful failure to pay, the incarceration would be in the nature of a penalty for contempt and would be separate from the conviction which he seeks to challenge in this proceeding. *Duvallon v. Florida*, 691 F.2d 483, 485 (11th Cir. 1982). Even under those circumstances, there would be no habeas corpus jurisdiction in this court. *Dremann v. Francis*, 828 F.2d 6, 7 (9th Cir. 1987).

III. Conclusion

For the foregoing reasons, I recommend that Stanton's petition for a writ of habeas corpus be **DENIED** without a hearing.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 12th day of March, 1997.

*David M. Cohen
United States Magistrate Judge*